90-5 38

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107

Stan Peacock

STAN PEACOCK, PETITIONER, PRO SE

NO. _____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Petitioners - Appellants, Stan Peacock and Patsy Peacock

submit this Petition for Writ of Certiorari to Review the Judgment of The United States Fifth Circuit Court of Appeals, issued 6-4-90, and denying Petition for Rehearing 6-27-90 on their No. 89-6212; decision on USDC No. S-88-140-Ca originally filed in the USDC, for the Eastern District of Texas, Sherman Division.

This Petition is filed pursuant to Title 28, United States Code: 1254 and Petitioners would show under R17 1 (a) Decision is in conflict with other decisions of other Courts of Appeals on similar matters; and has decided Federal questions in a way in conflict with the Texas Supreme Court and has so far sanctioned such a departure by a lower Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision; (c) has decided an important question of Federal law in a way in conflict with applicable decisions of this Court.

Questions Presented

Under Rule 21 1.(a), Petitioners present the following questions based on the Order to Dismiss by the Federal District Judge and confirmation by the United States Court of Appeals:

1. The question of the validity of the Texas Constitution, Article I § 17, regarding compensation for government "takings" of private property by means of inverse condemnation, in relation

to compensable takings under the Fifth and Fourteenth Amendments to the U.S. Constitution.

2. In connection to the above question, Texas has a ten year Statute of Limitations, for takings by inverse condemnation, with related damages, under Article 5510, Tex. Rev. Civ. Stat. Ann., which introduces the question of due process of law when this Court reviews this question and the following two questions.

3. The Federal District Judge revised his reasons for dismissal in his second Order of Nov., 1989 stating, "Plaintiffs' claim under Art. I § 17 of Texas Constitution, is not barred by limitations; under Texas law a claim for inverse condemnation is governed by a ten year statute of limitations", a statement which brings in the question of why the United States Appeals Court stated in its decision of 6-4-90, "the District Court's dismissal on statute of limitations grounds, we affirm", which is a total contradiction of the corrected grounds for dismissal, as is stated on the second page of second order "For reasons set forth in the Order, however, this claim is barred by claim preclusion", (this brings a claim that the United States Court of Appeals did not discuss in the decision and did not mention in affirmation and the implication being that the claim preclusion doesn't and won't stand.

4. The question of whether the Federal District Judge eliminated the statute grounds of the Appeals Court or whether the Appeals Court eliminated the claims preclusion of the Dis-

trict Court, by implication, or isn't it a fact that they eliminated both grounds and claims; which muddles the fact that Petitioner in reality has no lawful affirmation of the order on which to appeal to this Court.

5. The Court's decision showing a lack of recognition of the Texas Constitution, Article I § 17 and Article 5510, Tex. Rev. Civ. Ann. raises the questions of Court consideration of other Texas rules of civil procedure, including the ones permitting "Action De Novo" instituted into the District Federal Court when the Texas Court of Appeals neglected to include decisions on the prime Federal Issues and pleaded compensable compensation for this prevailing Plaintiff even though the Court reversed and remanded to state district for the purpose of the trial Court to issue a Mandamus, ordering Defendants to recognize Plaintiffs' subdivision and to issue four building permits and taps and utilities; the Judgment being made under state law, only.

6. If this Court decides that the theory of claim preclusion is a part of the Federal Appeals Court's confirmation of the Order, it raises the question of claim preclusion being invoked in the face of a decision by the Ninth Circuit Court of Appeals in 1986 in Norco Const. Inc. v. King County, 801 F2d, 1143, 1146 against the possibility of claims bar; stating that claims bar was wrong theory when previous suit was a Mandamus proceeding, because of the difficulty of showing damages on violation of rights, only, in

a Mandamus suit in which limited relief is all that is available.

7. Facts show that the City of Murphy abused the rights of Petitioners for over five years, separately many times, including one time in 1986 after the Texas Supreme Court issued a Writ of Error showing conditions under which Plaintiffs were entitled to their land rights; which raises the question as to what actually constitutes continuing tort (repeated denial of Constitutional rights at different times) and how this relates as to when any applicable statute of limitations begin, such as in this cause.

8. Established facts show that the state district Court wasted five years of precious time, making decisions that were reversed and remanded by the Texas Supreme Court; reversed and remanded by the Texas Court of Appeals; and caused a Writ of Error to be issued by the Texas Supreme Court; all which raises the question of if and when applicable statute of limitations can accrue, when time has elapsed because of authoritative errors and not thru fault of Petitioner.

9. The opinion of the Texas Court of Appeals proves the Appellees covered up and withheld vital information from the Courts for over four years (information that could have concluded the action); which raises the question of whether by their perjury on the stand and their withholding and disposing of Plaintiff's plat plans in trial, the City of Murphy should be rewarded by the Appeals Court's refusal to the rule that the applicable stat-

ute of limitations should be tolled because time was lost thru the malicious action of Appellees.

10. Records show that in a specific incident after the Texas Supreme Court issued the Writ of Error in April, 1986 showing that Petitioners had complied with the Murphy platting ordinance, Petitioners again applied in August, 1986 for permits and utilities directly to the Murphy City Attorney, who refused at that time (but admitted later before the Texas Court of Appeals) to admit Murphy's cover-up, and thus refused to issue the permits; which pin-points the question as to whether this specific application for permits was a new Constitutional rights violation (well within the time period of any applicable time bar, since Petitioners filed Action De Novo in Federal Court in March, 1988), was a continuing tort or was just a part of Murphy's old civil rights violations that occurred in 1983 and caused a suit to be filed in early 1984.

11. There is the question of the validity of the Appellees filed arguments in the Federal Court of Appeals when they refuse to file the identity of their very interested (in the outcome of this case) insurance company.

12. By Appellees depriving Petitioners of the entire use of their land for over five years, there is the question of Due Process of Law under Fifth and Fourteenth Amendments (in which there is the implied promise of compensation for compen-

sable takings) and the previously mentioned Article I § 17 of the Texas Constitution for inverse condemnation under the Texas Ten Year Statute of Limitations.

13. There is the question of any kind of application of adjudication when the record shows that Appellees have behaved toward Petitioners for more than six years in a manner of complete lack of good faith, justice and fair dealing, which is un-Constitutional.

14. In the two United States Supreme Court's landmark decisions of June, 1987, regarding property rights and development, the Court stressed under United States Code 28, that for purposes of review there can be no final judgment where Constitutional violations have been pleaded and evidenced but not determined or answered, which raises the question in this seven year old suit in six Courts of intense court action, with Federal claims being prime issues, of the manner in which these Courts have been able to avoid reaching even a single Federal claim decision and then the Federal District Court uses a single Court case of 1889 as a reason for an "implied, arbitrary, considered, construed" Order to Dismiss, because this silence and nullity on the part of the Texas Court of Appeals is implied to mean that the unwritten part of the Mandate is to be judged by all concerned as a Judgment that "finally determines every question involved in the appeal", which in turn raises a thousand other questions, as to the

real meaning of Constitutional Rights and justice and the reading of any desired meaning into a "no decision".

15. If this Supreme Court decides by its silence on the matter of Claim Preclusion that the United States Court of Appeals has affirmed Claim Preclusion, the only issue that Federal District Court left standing, the question is raised as to whether or not Claim Preclusion can be applied to prior suit when the entire case was and has been prejudiced by the state Court when it withheld proper issues (according to the decision by the Texas Court of Appeals) from the jury, which resulted in nobody, including the Appeals Court, having jury findings of fact.

16. The Texas Court of Appeals reversed, remanded and Ordered the trial court to Mandamus the City of Murphy to issue permits and utilities; which led the Federal District Court to say that it was implied that all claims and every question involved was determined without one Federal claim being adjudicated, which raises the question of law as to whether a legal decision can be implied legally when a stated, written decision would be unlawful (absent Findings of Fact) when it would be necessary to manufacture its own original Findings of Fact; and even if that is lawful in a negative decision, how could it be justified in the face of it being unlawful to issue a positive decision (be it implied or written) by the Court of Appeals without Finding of Fact, which again would require the Court to manufacture its own original

Findings of Fact?

17. The purpose of 42 USCS § 1983 is the preservation of human liberty and human rights with focus being on misuse of power possessed by virtue of state law; just compensation being grounded into the Constitution itself; a promise to pay because of the duty imposed by the Amendments; a fact that raises the question of just how much of the above has been justly exercised by all of the previous Courts in this cause during the past seven years and just how much of the dealing of justice could this Supreme Court condone if it actually had all of the fact and information?

18. Rule 290 of Texas Rules of Civil Procedure states that a Court must comprehend the whole of issues submitted and that omitted issues are grounds for new trial; which raises the question of how the Federal system looks at this; no new trial; throw all damage claims out the window, especially those for compensable takings?

19. There is the question of claims identification between the prior suit and instant suit, conclusive evidence being a prerequisite to claim preclusion.

TABLE OF CONTENTS

Table of Citation, Authorities

Cases

CONSTITUTION AND STATUTORY PROVISIONS

Amendments Fifth and Fourteenth
Article I § 17 Texas Constitution
Texas Constitution
United States Constitution

STATUTES, RULES AND LEGAL REFERENCE

NO. _____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107

A REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE COURTS BELOW

In the Supreme Court of Texas, No. C-4995.

Writ of Error, April 2, 1986.

Reversed and remanded.

Stated requirements of Murphy platting ordinance for approval. Facts and the Record show that Plaintiffs had complied with the requirements and Murphy knew that Plaintiffs were entitled to permits, taps, and utilities, but still refused to issue same.

In the Fifth District of Texas Court of Appeals;

No. 05-86001315-CV. November 23, 1987.

Reversed and remanded with instructions.

Ordered trial Court to Mandamus City of Murphy to recognize Peacocks Landing Estates as a Murphy subdivision and to issue building permits, utilities and sewer taps for the four lots.

The opinion stated that it agreed with four points of error and that the trial court failed to submit the proper issues to the jury. Stated that case is governed by Texas statutes Article 974a, Section 3. Re-stated previous Texas Supreme Court ruling in this cause relating to Murphy Code Requirements.

Stated that Murphy conceded (this time) during the submission before this Court that Plaintiffs did comply with the

requirements.

Stated that the subdivision plat was approved by operation of law 30 days after it was submitted (back in April 18, 1983).

Facts of the above disclosure prove that Murphy covered-up conclusive evidence for approximately four years and seven months.

Facts show that Murphy unduly, maliciously controlled litigation, evidence, time periods for litigation and court action.

In the United States District Court for
Eastern District of Texas, Sherman Division;
Civil Action No. S-88-140-CA August 18, 1989.
Order to Dismiss

Jury trial had been set for September, 1989 and Petitioner had submitted all requirements in the Scheduling Order, including Requested Jury Instructions, Definitions and Interrogatories and issues when the Order came down.

The Order cited reasons for dismissal as being Time Bar and Claims Preclusion and cited an 1889 case as proof that "implication is ordinarily construed as settling all issues when reference to relief is omitted by an Appeals Court". And "a judgment of a Court of Appeals finally determines every question involved in the appeal whether noticed by the Court or not".

The Order conceded on page seven, that under Texas law, The Appeals Court has no authority to "make its own original Findings of Fact concerning unanswered Federal claims (all of them) and then enter Judgment based on such findings", in favor of Plaintiff.

Even so, the Order cites these unanswered claims (the Court ruling that a negative answer has to be implied) as proof that they have been adjudicated (unlawful findings of fact and all) by implication and construing, which is the basis for claim preclusion. In other words an implied Judgment in favor of Plaintiff cannot be made without findings of fact (or any kind of Judgment), but an implied Judgment (based on Court making its own original findings of fact) against Plaintiff, must be made. If this is proper law it is a fact that if an Appeals Court wants to make a judgment against a Plaintiff, (without Findings of Fact) it can just ignore the claims and a negative judgment will be implied and it will be almost impossible to appeal (the main reason for impossibility of appeal is that Plaintiff will not be aware of what the implication covers).

The Order also admits on page seven that the trial Court refused to submit Plaintiffs' requested issues; that there were no Findings of Fact by the jury upon which the Appeals Court could have entered judgment favorable to Plaintiffs.

In the same United States District Court,

same No., A Second Order

Denial Plaintiffs' Motion For Rehearing

The Order stated that the Notion was carefully reviewed.

On page 2 of Second Order issued November 9, 1989, is the statement, "the Plaintiffs claim under Article I § 17 of the Texas Constitution is not barred by limitations.

Further, the Order states "the Plaintiff correctly points out, under Texas law, a claim for inverse condemnation is governed by a ten year statute of limitations". See Hudson v Arkansas Louisiana Gas Co. 626 SW2d 561, 563 (Tex App, Texarkana 981, Writ ref'd NRE).

United States Fifth Circuit Court of Appeals

No. 89-6212 From Eastern District of Texas

(s 88-140-CA) June 4, 1990

Petition For Rehearing Denied June 27, 1990

Stated that District Court's Dismissal on "Statute of Limitations grounds of complaint brought under 42 USC § 1983 is affirmed".

This Appeals Court affirmed only the grounds that the Federal District Court had eliminated from its Order in its Sec-

ond Order of November 9, 1989, on page seven. This is shown above. On that Order is the statement that Plaintiffs' actions are not time barred by reason that Texas has an applicable ten year statute of limitations.

Applying the District Court's own application of law, this means that since the Appeals Court did not mention in the entire opinion the grounds, claim preclusion, it is to be construed and implied that claims preclusion has been eliminated. If it has been eliminated and since the Federal District Court has already eliminated time bar because of existing facts, it can also be implied tat a non-Order has been affirmed. As a fact, it surely can now be implied that Petitioners' Petition that the Order to Dismiss be reversed and vacated is now a material fact as having been done. No claim preclusion, no time bar. The two Courts are in Contradiction and nothing is left.

NO._____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107

JURISDICTION

The Judgment of the United States Fifth Circuit Court of Appeals was made and entered June 4, 1990. The Petition For Rehearing

was denied and entered June 27, 1990. The No. 89-6212 was on an Appeal from the United States District Court of Texas for the Eastern District of Texas (S-88-140-CA). This Petition is compliance under United States Supreme Court Rules 33 and 21. Copies of the affirmation of the Order and denial of the Petition for rehearing are appended in the Appendix.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

i

Grounds On Which The Jurisdiction

Of This Court Is Invoked

This cause is comprised of almost only Federal issues and claims and compensable Constitutional violations by authorities. The Federal questions were timely and properly raised in the Petition filed in Federal Court in early 1988 and again raised in the Appeal of Order to Dismiss filed in the Federal Appeals Court; which confers on this Supreme Court jurisdiction to review the action in this cause and the decisions by the United States Court of Appeals and the federal District Court, by way of Certiorari.

The United States Appeals Court in this case has decided important Federal law and Texas law questions which should be settled in this Court and has decided them in a way in conflict with applicable decisions of this Court. It has decided Texas law questions in conflict with the Texas Supreme Court and the Texas

Constitution, Article I § 17.

The Fifth Circuit Court of Appeals has rendered this decision in conflict with the United States Court of Appeals of the Ninth Circuit concerning the same type matters and decisions.

This Federal Appeals Court has so far sanctioned a departure by a lower Court from the accepted and usual course of Judicial proceedings as to call for an exercise of this Court's power of supervision.

There are errors relating to fact of law and errors in determination of state law in the confirmation of the Order.

The Federal Appeals Court has ignored some of the principals of this Supreme Court.

The instant suit consists of Due Process of Law, violation of equal rights, denial of vested and Constitutional land rights, compensable takings and malicious action by the City of Murphy, Texas for a time period of at least five years, a time during which the Texas District Courts, Texas Court of Appeals Courts and two Federal Courts have strung this cause out without ever allowing a determination of even one Federal question (prime issues).

Now, the Federal Court of Appeals has affirmed an Order of Dismissal of the entire cause, based on grounds that were already established invalid by the Federal District Court. The grounds, relied on by the Federal District Court (claims preclusion) for Affirmation were thus discorded. All of which makes it

imperative that this Court review and decide that the Order to Dismiss is invalid (a Federal question). The affirmation of the Appeals Court and the Order to Dismiss is subject to reversal, by this Supreme Court, on merits, after review.

The Federal District Court went back to a prior suit in state Court in this cause. The prior suit had Federal claims and originally went thru the highest Court of last resort in the state and later thru the Texas Court of Appeals. This action by the Federal Courts may have opened up grounds for this Court to review (an action welcomed by Petitioners) the Court conduct in the Courts below in prior case.

NO. _____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107

Constitutional Provisions, Statutes,

Ordinances and Regulations

Petitioners, in the course of establishing the credibility of this

Petition for Writ of Certiorari, do cite the Provisions of the United States Constitution, the Texas State Constitution, the related Statutes and regulations and the Platting Ordinance of the City of Murphy, Texas, which are involved in this case, in this manner.

i

United States Constitution, Fifth and Fourteenth Amendments, 42 U.S.C. § 1983, 28 U.S.C. § 1254 and 1257, and the Texas Constitution Article I § 17 and Due Process of Law; all related to the principals of Compensable Takings of private property by authorities without due compensation. In this cause it has been proven by the Texas Court of Appeals and the Texas Supreme Court that a taking has occurred, but all the other courts involved have refused Due Process of Law. They have refused to let Petitioners have their day in Court proving the amount of damages and compensation due.

By the Amendments it is ground into the Constitution the promise to pay. Not one dollar has been paid.

There has been no Due Process of Law; not even Texas Constitutional Law, which has a ten year Statute of Limitations, which the Federal Court of Appeals has neglected to rule on in this cause.

ii

Article 5510, Tex. Rev. Civ. Ann., relates as to the Texas ten year Statute of Limitations for collecting for takings under Texas Constitution Article I § 17 by way of inverse condemnation. It was cited in Both Federal Courts and the Federal District Court, in the second Order for Dismissal, admitted that Petitioners claims for the ten year limitations were valid. The Federal Court of Appals ignored the admission and withdrawal.

iii

The Murphy Platting Ordinance and Texas Statutes Article 974a, Section 3. These two items were a part of a prior case and a part of instant case where proof was introduced to show that Murphy was covering-up from April 18, 1983; That compensable compensation was due from April 18, 1983 according to the Texas Court of Appeals and Texas Supreme Court decisions which cited Article 974a in establishing that Murphy had 30 days in which (according to the requirements of the Murphy Platting Ordinance) to approve or disapprove Petitioners' plat plan, which they never did, choosing instead to falsely claim that a plat plan was never presented, a claim that they withdrew in hearing before the Appeals Court (as stated in the opinion).

In 28 U.S.C. § 1254 and 1257 and the landmark decisions of this Supreme Court in June, 1987 regarding two California cases there are positive statements to the effect that for purposes of review by this Court, there can never be a final decision where Constitutional violations have been pleaded, evidenced and not determined.

This cause has been pleaded, evidenced and not determined. It is for Constitutional violation by authorities. It has consisted of different violations in two suits without a determination of any Federal claim or even one damage claim in two Federal Courts, four times in the state district Court, two times in the Texas Court of Appeals and the Texas Supreme Court. The Federal District Court has termed the win in the Texas Appeals Court, a loss by way of an implied decision of a 1889 case. The Petitioners earned a Writ of Mandamus (if they can ever make Murphy comply with it) which may give them back some of their property rights. The ordeal has, up until now taken seven years and four months, in which time only decisions on state statutes have been made for the Mandamus.

v

Rules 290, 164, 434, 165a and 299 are all cited in the Petition and the Federal Appeals. These are in Vernon's Texas Rules

of Civil Procedure and are related to the Right for Action De Novo when Appeals Court does not determine rights of prevailing party and rights still exist. Rule 290 states that omitted issues by an Appeals Court are grounds for Action De Novo and that the finding of a Court must comprehend the whole of issues submitted.

In these rules are the answers as to why the Federal District Court is in error and its Orders and the Appeals Court is in error by affirming (if it did in reality affirm existing grounds).

Rule 299 contains the information, in answer to the District Court's implied decisions of the Texas Court of Appeals, a. without Findings of fact, only points subject to review are points of error related to fundamental error; b. a judgment may not be supported upon appeal by presumption of finding which has not been found by trial Court; c. expressed findings cannot be extended by implication to cover further independent issuable facts; d. Appellate Court must make Judgment in light of finding actually made and cannot presume in favor where it has not been made.

28 U.S.C. § 1404a, 1441-1445 were cited in the Petition.

NO._____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107

Statement Of The Case Containing The Facts Material To The Consideration Of The Questions Presented

This instant suit is an outgrowth of a prior suit in the

State District Court for Mandamus, filed in 1984 after an application for approval of a four lot subdivision plat and plan and for four building permits with taps and utilities, which were presented by Plaintiffs in person to the elected City of Murphy, Texas, Mayor and the elected City Secretary, on April 18, 1983, were not acted on.

For four and one half years and in every hearing in District Court, Murphy denied that the plat plan (there were six copies presented to the Mayor) was ever presented to the Murphy Governing Body. Defendants continuously refused to issue building permits for Plaintiffs to build four homes for themselves, their grown children and for sale, business, fun and profit.

On April 2, 1986 after the District Court issued a summary judgment against Plaintiffs, The Texas Supreme Court issued a Reversal, Remand and Writ of Error. The Per Curiam Opinion explained the requirements of the Murphy ordinance for plat approval. Plaintiffs and Murphy both knew that Plaintiffs had already complied and was entitled to the permits. Plaintiffs, armed with the Writ, applied again for permits and utilities for four lots. The Murphy City Attorney, August 5 1986, again refused to issue the permits and then and there violated, again, Plaintiffs' Constitutional Rights, equal rights, vested property rights, and made compensable taking, again.

As a direct result of Murphy refusal in August, 1986, and later

refusal to fully honor a Mandamus ordered by the Texas Court of Appeals November 23, 1987, Plaintiffs filed suit in Federal District Court May 11, 1988. This suit was well within any limitations since Murphy refused permits after the Writ of Error, August 1986.

Before the Federal suit was filed, the Texas Court of Appeals issued a Remand, Reversal and ordered the trial Court to Mandamus the City of Murphy to recognize Peacocks Landing Estates as a subdivision and to issue four building permits, taps and utilities. During the Jury trial, the Murphy City secretary and Mayor committed perjury on the stand. Murphy destroyed all six plats and showed only a worksheet of Plaintiffs. They claimed there were no other plats and that no plat was presented to the Murphy Governing Body.

The Texas Court of Appeals stated in their opinion that Murphy admitted in appearance before them that the plat had been presented to the Murphy Governing Body; and that the trial Court had withheld proper issues from the jury. This left the Court without jury findings of fact. With no findings of fact, the Court of Appeals could not determine Federal claims. This also contributed to the Federal Action De Novo.

The Action De Novo was filed where the prior suit should have been filed, in the United States District Court for the Eastern District of Texas No. S-88-140-CA. Jurisdiction was

determined:

The damages were over $100,000. The action was against the City of Murphy under the "substantive" and "procedural" clause of the Fifth Amendment. The abuse occurred in Murphy, Texas, Collin County. The suit arose from arbitrary government action adversely affecting Plaintiffs' property rights under the equal protection clause of the Fourteenth Amendment and 42 U.S.C. § 1983. The outcome of the dispute depending on determination of the construction of the United States Constitution.

This Action De Novo included all undetermined Federal claims of which Plaintiffs still had a right to and was filed under the rights of the laws of Texas; under the Texas Constitution, Article I § 17; under Article 5510 Tex. Rev. Stat. Ann. covering the Texas ten year Statute of Limitations and related injuries for inverse condemnation in the taking of private property without compensation; and Texas rules of civil procedure numbers: 290, 164, 434, 165a, and 299 related to Action De Novo when Court of Appeals does not determine rights (and rights still exist) of prevailing party, omits issues or does not have a finding that comprehends the whole of issues submitted and errors have been found in the trial Court Judgment.

Setting Jury trial for September, the Federal District Court is-

sued an Order to Dismiss, August 18, 1989, based on an 1889 decision regarding "implied disposal of all claims"; the Court using this case and the implications stated, as grounds for claim preclusion; the implication that all Constitutional questions and Federal damage claims that had been going on for seven years, was determined by a Texas Appeals Court, without Findings of Fact, without taking notice of Federal claim or damage claim; and taking notice of only the trial Court errors of which they agreed (grounds for new trial) and one state Statute, Article 974a which shows that Murphy had been depriving Plaintiffs of their land rights since May 18, 1983, after th submission of the plat-plan April 18, 1983.

Obviously not aware of the Texas Ten Year Statute of Limitations, the Federal Court issued a two year time bar as grounds, also.

After a Motion for rehearing, the Federal District Court removed the time bar from the Order November 9, 1989, as grounds. On the second page of the Second Order, the Court stated, "the Plaintiffs' claims under Article I § 17 of the Texas Constitution is not barred by limitations".

On June 4, 1990, the Fifth Circuit Court of Appeals issued an affirmation.

Not noticing or not realizing that the time bar had been ruled as invalid, the Appeals Court affirmed on grounds of time

bar (only). Claim preclusion was not mentioned in any part of the text of affirmation. It was not mentioned as grounds. Nothing was mentioned as support of claim preclusion. Claim preclusion was not affirmed.

Which leaves the question of just what really was affirmed by the Fifth Circuit Court of Appeals on June 4, 1990. A nullity.

In approximately April 1990, Appellees filed a Brief in support of the Order. The Document and all subsequent filings by the Appellees in the Federal Court of Appeals refused to name, correctly, the interested parties or even to file a proper certification. Among those not listed was Murphys' very interested Insurance Company.

NO._____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107

A DIRECT AND CONCISE ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF WRIT

By way of argument, Petitioners would show to this United States

Supreme Court the following special and important reasons for the necessity of a review by Writ of Certiorari:

i

There are the many contradictions in all of the decisions made by the five different Courts in the pursuit of this lawful cause against unlawful actions by governing authorities (a fact that no Court has disagreed with).

The Federal Court of Appeals has confirmed that part of the Order that the Federal District Court disposed of in a Second Order of Dismissal. It also confirmed on grounds that were removed, also.

Although, the Federal Court of Appeals eliminated the second and only remaining grounds of the Order to Dismiss, by implication, (ignoring claim preclusion, as it should have) if the Order still is in effect, it is proof positive that it has rendered a decision in contradiction of the ruling of another Circuit Court of Appeals, the Ninth. In Norco Const. Inc. v King County, No. 85-3513, decided Oct. 3, 1986; 801 F2d 1143, Circuit Judge, Kenedy, ruled in the decision to the effect that the possibility of res judicata was wrong theory of law regarding the Plaintiffs' ability, in a Mandamus proceeding, to fully plead and collect damages. That the limitated relief available in a state Mandamus Proceeding prevents invoking res judicata to bar other and dam-

age claims. This is the reason alone for allowance of Writ.

ii

The Federal District Court that issued the Order to Dismiss, ruled that Plaintiffs' suit for Mandamus, in state Court, eliminated any future suit for Federal claims, since even though not one Federal claim was ever decided in the cause, all of them are presumed to have been fully adjudicated by the Texas Court of Appeals, without Findings of Fact, evidence or testimony; and not even mentioning Federal issues; deciding on state law, and finding four errors in the Court decision. Petitioners won the Mandamus but lost the cause by implication according to an 1889 Appeals Court decision. Reason, alone for Writ.

iii

The Federal Court of Appeals, in its confirmation of the Order to Dismiss, is in contradiction with the Texas Supreme Court by ruling against the Texas Constitution, Article I § 17 and state statute 5510 regarding the Texas 10 year Statute of Limitations with related damages for inverse condemnation in takings of the land of private citizens without compensation in relation of due process of law under the Fifth and Fourteenth Amendments of the United States Constitution. This is reason alone for allowance of Writ. Cite Hudson v Arkansas Louisiana Gas Co.

Tex. App. 626 S.W.2d 561 Dec. 22, 1981. In deciding, the Appeals Court stated, "evidence sufficiently present a question of "Taking" as well as "damage" and the ten year statute should have been considered".

iv

By not recognizing the Texas Rules of Civil Procedure, the Federal Court of Appeals is in contradiction to the state highest Court of last resort, the Texas Supreme Court. Among the rules, as shown elsewhere in this Petition, is the rule that allows Action De Novo when an Appeals Court omits determination of prevailing Plaintiffs' claims and rights and the rights are still there. This is reason alone for allowance of Writ.

v

The affirmation of the Order to Dismiss in this Federal Claims suit has established law which may be in conflict with applicable decisions of this Court. It may have decided some sides of important question of Federal Law which may not have been, but should be decided by this Supreme Court. In addition to the information listed above, there are the questions of decisions, by the two Federal Courts in this ruling, confusing the average person (the rulings, themselves, being confused and contradictory) raising questions of being able to ever make "City Hall" pay for

Compensable taking when they play the "stall" game with Courts until the average person is time barred. These decisions have so far departed from th usual course of judicial proceedings (and Justice and Constitutional Rights as the average person sees them) as to call for an exercise of this Court's power of supervision. This is grounds for review by this Supreme Court and is relied on for allowance of Writ.

CONCLUSION

The Record shows that during five years in the first three state Courts, Plaintiffs were denied total use of that land, all vested land rights and permit rights were not equal to others in like circumstances.

By covering up and misleading the Courts on vital evidence, including perjury by the city Mayor and city secretary in trial, the Defendants kept the action going until November, 1987. On that date the Texas Court of Appeals stated that in their hearing Murphy admitted that Plaintiffs had complied with the Murphy Ordinance back in April 18, 1983, by presenting the platplan to the Murphy governing body (something that they had denied to all of the Courts until then). This was a malicious violation of Constitutional Rights and the decision of the Federal Court of Appeals has rewarded them for it.

By subterfuge, Defendants limited viable Court action in

seven years to one trial in Court, and by the trial Judge withholding proper issues from the jury, that one was totally reversed.

On May 11, 1988, Plaintiffs lost confidence in state Court action and the run-around (nothing good was ever going to happen there), and the unresolved Federal claims were filed in the Federal District Court in an effort to get American justice. After setting trial for September, 1989 while waiting a year before answering Defendants' Motion for Dismissal, the Court decided that all unanswered Federal claims had been answered, adjudicated and disposed of by presumption in prevailing Plaintiffs' Appeal that was a non-answer to Federal Rights issues. Still, no trial, no chance to present evidence or witness, no testimony, no exhibits, no compensable compensation, no damages and still no Federal Rights or claims. Still "no nothing".

Please refer to No. 85-1199 First English v County of L.A. Cal. 482 US - 96 L Ed 2d250, 107 S Ct; decided June 9, 1987; and Nollan v California Coastal Commission No. 86-133 483 US - 97 L Ed 2d 677, 107 S Ct - decided June 26, 1987.

The spirit of the Supreme Court in the above landmark decisions was that nothing was going to be "business as usual" again for government authorities stepping on rights of private citizens; that non-payment for compensable damages thru takings was not an acceptable solution.

This case personifies and multiplies and screams, "no pay-

ment for compensable damages if you do it right (like Murphy)". There has been no compensation; not even a dollar. No one has denied that Murphy denied all use of land; made a compensable taking.

Under 28 U.S.C. § 1253 and 1257 and in the above cases, this Supreme Court has indicated that where Constitutional violations have been pleaded, evidenced and left undetermined, there can be no final determination, for purpose of review. The constitutional violations in this case have been pleaded and evidenced and not determined.

However, the United States Federal Court of Appeals of the Fifth Circuit has stated by actions that this may be well a final judgment.

There has been no lack of diligence.

Prayer

WHEREFORE, PETITIONERS PRAY that the United States Supreme Court take jurisdiction of this case and the parties, see the violations of human land rights, recognize the errors of all of the Courts concerned and grant this Petition for Writ of Certiorari To Review Judgment of the United States Fifth Circuit Court of Appeals; For which Petitioners will ever pray.

Stan Peacock, Petitioner, Pro Se

Rt. 3, Box 26 BB

Farmersville, Texas 75031

(214) 782-7107

NO._____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

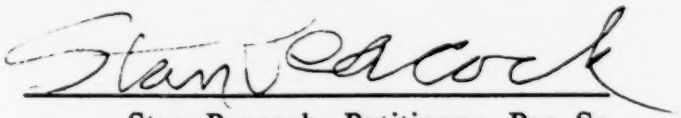
FARMERSVILLE, TEXAS 75031

(214) 782-7107

CERTIFICATION OF PROOF OF MAILING

I, Stan Peacock, Petitioner Pro Se, hereby certify that on the 23 day of August, 1990, I deposited by certified mail, prop-

erly addressed to the Clerk of The United States Supreme Court, within the time for filing, the Petition for Certiorari to review the Judgment of the United States Fifth Circuit Court of Appeals.



Stan Peacock, Petitioner, Pro Se

23rd day of August, 1990

Rt. 3, Box 26 BB

Farmersville, Texas 75031

(214) 782-7107

NO._____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107

CERTIFICATE OF MAILING, PROOF, TO APPELLEES

I, Stan Peacock, Petitioner Pro Se, hereby certify that on the 23 day of August, 1990, I deposited by certified mail, prop-

erly addressed to Arthur L. Walker, attorney for Appellees, within the allotted time, a copy of the Petition for Writ of Certiorari.

Stan Peacock, Petitioner Pro Se

23rd day of August, 1990

Rt. 3, Box 26BB

Farmersville, Texas 75031

(21) 782-7107

NO. _____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

APPENDIX

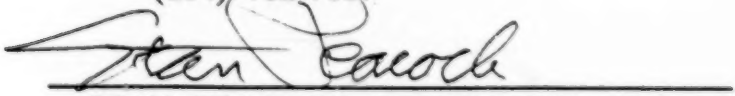
SEPARATELY PRESENTED

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107



STAN PEACOCK, PETITIONER, PRO SE

NO. _____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107

APPENDIX

Stan Peacock

STAN PEACOCK, PETITIONER, PRO SE

NO. _____

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1990

STAN PEACOCK and PATSY PEACOCK

PETITIONERS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

RESPONDENTS - APPELLEES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

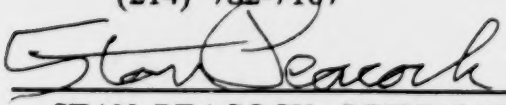
APPEARING PRO SE

STAN PEACOCK

Rt. 3, Box 26 BB

FARMERSVILLE, TEXAS 75031

(214) 782-7107



STAN PEACOCK, PETITIONER, PRO SE

Prior Case Between The Parties,

Relevancy of Review Raised By

Federal District Court in Ruling

For Claim Preclusion

Writ,

Reversal and Remand By Texas Highest Court of Last Resort; Establishes Plaintiffs' Rights To Permits and Utilities and Compensation For Compensable Takings:

In The Supreme Court of Texas

No. c-4995

Stan Peacock Et. Al., Petitioners

v

City of Murphy, Texas Et. Al.,

Respondents

Decided April 2, 1986

PER CURIAM OPINION

Stan Peacock sued the City of Murphy, Texas, seeking to compel it to issue building permits and utility connections for four lots. The trial Court granted the City's motion for summary judgement. In an unpublished opinion, the court of appeals affirmed that judgement, holding that Peacock had never filed a subdivision plat with the governing body of Murphy. We have determined that a fact issue exists and, thus grant Peacock's application for writ of error. Without hearing oral argument, we re-

verse the judgement of the Court of Appeals. Tex.R.Civ.P.483.

It is well settled that when a nonmovant expressly presents summary judgement proof to establish a fact issue, the granting of summary judgment is improper. City of Houston v. Clear Creek Basin Authority, 589 S.W.2d 671,678 (Tex. 1979).

In his affidavit in response to the Motion for summary judgment, Peacock stated that he filed his preliminary and final plat and plans with the mayor and city secretary of Murphy. He addressed his application for approval of his plat to the mayor, the city, the city planning and zoning commission, and the city council. He further stated in the affidavit that he was never notified by the city secretary of any deficiencies in his plat and plans.

Section 13-1-6 of the Murphy Code of Ordinances requires that an applicant file a proposed subdivision plat with the mayor of Murphy. The mayor is to submit the plat to the city engineer, the city planning and zoning commission, and the city council. Peacock presents a fact issue of whether he filed his subdivision plat with the governing body of Murphy.

In addition, in his petition, Peacock alleged that the city subjectively enforced its subdivision regulations. In his affidavit opposing summary judgment, Peacock stated that the city required him to include "things" on his plat that were not included on other subdivision plats approved by the city. He attached copies of five subdivision plats filed in Collin County and approved by Murphy. Peacock's summary judgment proof raises a

fact issue of whether the city is estopped to deny approval of his subdivision plat.

The Court of Appeals' opinion conflicts with our opinion in City of Houston v. Clear Creek Basin Authority. Accordingly, we reverse the Court of Appeals' judgment affirming summary judgment in favor of the City of Murphy, and remand the cause to the trial court.

Opinion Delivered: April 2, 1986.

Further Relevancy for Review of Prior Case,
Raised by Federal District Court in Citing this
Appeal to Texas Court of Appeals
While Implying a Negative Decision
Concerning Prevailing Plaintiffs'
Unanswered Federal Issues

Reversal, And Remand With Instructions To The Trial Court To Mandamus The City of Murphy, Texas, to Recognize Peacocks Landing Estates as a Subdivision and to Issue Four Building Permits, Utilities and Sewer Taps

Court of Appeals
Fifth District of Texas
At Dallas
No. 05-86-01315-CV
Decided November 23, 1987

Stan Peacock Et. Al., APPELLANTS,

v

City of Murphy, Texas Et. Al., APPELLEES

Before Justices Witham, Thomas and McCraw

November 23, 1987

Stan Peacock, Patsy Peacock and Camelot Real Estate, Inc. appeal a judgment which denied: (1) a declaratory judgment, (2) a Writ of Mandamus, and (3) charges against the City of Murphy resulting from the City's refusal to issue four building permits. In points of error numbers three, five, seventeen, and twenty-one, appellants argue that the trial court failed to submit the proper issues to the jury. We agree and reverse the trial court's judgment and remand with instructions to the trial court to mandamus the City of Murphy.

On April 18, 1983, Stan Peacock appeared at the Murphy City Hall and presented a plan for subdividing his property into four lots. As required by the city subdivision ordinance, the plan was sent to the City Engineer who on April 22, 1983, reported to the city secretary that the plan did not meet the requirements of the city, and therefore, was not to be filed with the Planning and Zoning Commission as a proposed preliminary subdivision plat. Thereafter, an unidentified employee of the city secretary's office informed Peacock by phone that the plan was not sufficient

to be considered as a preliminary subdivision plat and related to him the additional requirements raised by the City Engineer. Ten months later Peacock notified the city that he considered the plan to have been approved by virtue of inaction of the part of Murphy's governing body.

The Peacocks sued the City of Murphy, Texas, seeking to compel it to issue building permits and utility connections for the four lots. The trial court granted the city's motion for the summary judgement. In an unpublished opinion, this Court affirmed that judgement , holding that Peacock had never filed a subdivision plat with the governing body of Murphy. Thereafter, Peacock appealed to the Supreme Court of Texas, which issued a per curiam opinion, Peacock v. City of Murphy, 706 s.w.2d 648 (Tex.1986), holding that "Peacock avers that he followed the city's regulations (and) that he filed his preliminary and final plats and plans with the Mayor and City Secretary of Murphy. Peacock presents a fact issue of whether he filed his subdivision plat with the governing body of Murphy." Peacock, 706 S.W.2d at 648. The Supreme Court reversed and remanded the cause to the trial court for trial on the merits.

Thereafter, a jury was presented and answered the following special issue affirmatively:

The Plaintiffs did not comply with the filing requirements of the city of Murphy's subdivision regulations for the filing of a preliminary subdivision plat.

(Emphasis added). Based upon such jury verdict, the trial court entered judgment that Peacock recover nothing by said suit and that all relief sought by Peacock be denied. From that judgment, Peacock brings this appeal.

Counsel for the City concedes that Murphy is a general jurisdiction city and therefore the general law of the State of Texas applies. Specifically, this case is governed by Texas Revised Civil Statutes Article 974a, Section 3 which states:

Any person desiring to have a plan, plat or replat approved as herein provided, shall apply therefore to and file a copy with the Commission if there be one, or with the governing body if there is no Commission. The Commission or governing body, as the case may be, shall act upon same with-in thirty (30) days from the filing date. If said plat be not disapproved within thirty (30) days from said filing date, it shall be deemed to have been approved by the Commission, or the governing body if there is no Commission.

The Supreme Court specifically ruled that Peacock presents a fact issue of whether he filed his subdivision plat with the governing body of Murphy. Peacock, 706 S.W.2d at 648. The issue was not whether he complied with the City of Murphy's filing requirements. Regardless, the Appellees conceded during the submission before this Court that the Appellant did a file a

plat-plan with the City. Since this plat was admittedly filed and the City's governing body failed to act within the thirty-day statuary period, the subdivision plat was approved by operation of the law.

We reverse the trail court's judgement and remand with instructions that it issue a Writ of Mandamus ordering the City of Murphy to issue the requested permits.

JOHN L. McCRAW, JR.

Justice

DO NOT PUBLISH

Tex.R. App. P. 90

86-01315. F

JUDGMENT

In accordance with this Court's opinion of November 23, 1987, the judgement of this Court is as follows: The trial Court's judgment in favor of Appellee, City of Murphy, Texas, is reversed, and the cause of City of Murphy, Texas and City Council of Murphy, Texas against Stan Peacock, Patsy Peacock and Camelot Real Estate Inc. is remanded to the trial Court with instructions that it issue a Writ of Mandamus ordering the City of Murphy to recognize Peacocks Landing Estates as a subdivion of the City of Murphy, and to issue building permits, utilities and sewer taps for Peacocks Landing Estates in Murphy, Texas.

It is ORDERED that Appellants, Stan Peacock, Patsy Peacock, and Camelot Real Estate Inc., recover their costs of this

appeal from Appellees, City of Murphy, Texas.

November 23, 1987.

JOHN M. McCRAW, JR.

JUSTICE

86-01315.JF

The Above Grounds For This Review of The State Court and Texas Court of Appeals Decisions in This Cause in Prior Suit Was Raised by The Federal District Court And the Federal Appeals Court Using These Judgments as a Reason For This Time Bar and Possibly Claim Preclusion The Appeals Court Decision Above Certifies that Murphy was Rewarded For Covering Up Vital Evidence For Fifty Four Months And That Petitioners Were Entitled To Land Rights Since May 18, 1983

Excerpts FROM ORIGINAL RECORDS AND REPORTS

Texas Bill of Rights, I, § 17, TAKINGS

Sec.17. No person's property shall be taken, damaged or destroyed without adequate compensation being made. Defined under 28 - To Constitute a damaging of private property within the constitutional provision, there must be interference with its free use, resulting in some physical inconvenience.

Under 27 - Acts short of actual physical invasion can amount to a compensable taking and governmental restrictions on use of property can be so burdensome as to constitute a compensable taking. A physical taking of property is not required under this section.

Texas Ten Year Statute of Limitations, Art. 5510,

Inverse Condemnation:

Any person who has a right of action for the recovery of lands against another having peaceable and adverse possession thereof, shall institute his suit therefore with in ten years next after his cause of action shall have accrued and not afterward.

James S. Hudson

v.

Arkansas Louisiana Gas Company

No. 8928, Tex.App., 626 sW2d 561

Court of Appeals of Texas

Nov. 24, 1981

Property owners sued Gas Co. alleging continuing trespass by virtue of presence of buried gas pipeline and praying for injunctive relief as well as compensatory and punitive damages. The 102nd Judicial District Court entered summary judgment for Defendant on its affirmative defense of two year limitations period and Plaintiffs appealed. The Court of Appeals, Hutchinson, J., held that where pleaded facts were sufficient to support inverse condemnation and/or an injunction, the trial judge erred in failing to consider the ten year statue of limitation applicable to the "taking" issue. Reversed and Remanded. Appellant"s allegations and the summary judgement evidence sufficiently present a question of "taking" as well as a "damage" and the ten year statute of limitations should have been considered. The judgment of the trial court is reversed and the cause is remanded.

Texas Rules of Practice Rule 166-A:

Page 41 Party seeking summary judgment on basis that cause of action is barred by limitations has burden to conclusively establish bar of limitations.

Hanover Insurance Co.

v.

Richard H. Sonfield

No. 14478

Texas Court of Appeals

Jan. 7, 1965, 386SW2d 160

Appeal and Error: Appellate Court is required to appraise judgment where it has been made, and it cannot presume a different finding in favor of judgement where it has not been made. Rules of Civil Procedure Rule 299.

Reid v. Gulf Oil Corp.

323 SW2d 107

Appeal and Error: Reviewing Court was required to appraise judgment in light of findings actually made and could not presume a different finding in favor of the judgment where it had not been so made. Rules of Civil Procedure, Rule 299.

Response From Judge Verla Sue Holland, Trial Court judge, After Plaintiffs made 2nd request for Findings of Fact for appeal, when no jury findings were available:

October 14, 1986

Dear Mr. Peacock,

After reviewing your Second Request for Findings of Fact and Conclusions of Law filed on this date, the Court has denied your request due to the fact that this case was tried before a jury.

Thank You.

Noroco Construction Inc.

v.

King County

No. 85-3513

United States Court of Appeals

Ninth Circuit

Oct. 3, 1986

801 F.2d 1143 (9th Cir. 1986)

The Court of Appeals, Kenedy Circuit Judge, held:

Although on appeal there was no oral argument of res judicata, both parties briefed the issue. We reach it here.

Norco's cause of action for damages are not res judicata, for Norco could nor have raised them in the earlier mandamus proceeding. All it could show in that proceeding was a right to have some action taken on its application, and it is unlikely it could have shown any substantial damage caused by the violation of that right alone.

While we express no opinion on the merits of any of Norco's stated cause of action, the limited relief available in the state mandamus proceeding prevents invoking res judicata to bar its claims.

Bonniwell

v.

Beech Aircraft c-01233, Texas

Jan. 4, 1984

663 SW2d 820

The Court ruled:

Collateral estopped or issue preclusion bars relitigation of issues actually litigated and essential to the judgment in a prior suit. (1) the facts sought to be litigated in the second action were fully and fairly litigated in the prior action; (2) these facts were essential to the judgment in the first action.

Texas Rules of Civil Procedure:

Rule 299 - Omitted Findings Sec. 11

The judgment may not be supported upon appeal by a presumption of finding upon any ground of recovery and defense, no element of which has been found by the trial court.

Where there were no Findings of Fact or Conclusions of Law, which would constitute record of cause, only point subject to Appellate review in Court of Appeals were such points of error that would amount to fundamental error.

Appellate Court is required to appraise judgment in light of findings actually made and it cannot presume a different finding in favor of a judgment where it has not been made.

Expressed findings made by trial judge cannot be extended by implication to cover further independent issuable facts.

On Jan. 25, 1988, Before the Judge Issued The Writ of Mandamus, Plaintiffs Tried to Get a Jury Trial By Demand; Efforts For Federal Claims Were Never Abandoned

District Clerk,
Collin County, McKinney, Texas

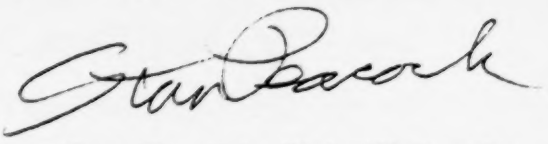
Re: No. H-84-074-296
Stan Peacock Et. Al.
v.
City of Murphy, Texas Et. Al.
In
The District Court, 296th District
Collin County, Texas

On behalf of Stan Peacock, Et. Al. Plaintiffs in the above entitled and numbered cause, we hereby make application and demand for jury trial of such cause.

Enclosed is our check for $10.00, No. 1798, payable to your order for $10.00, full payment for District Court jury fee.

By copy of this letter, we are notifying all attorneys in the case of

this demand. Thank you for your cooperation and assistance.



Stan Peacock, Plaintiff Pro Se

FILED

1988 Jan 25 A.M. 11:42

This Demand Was Ignored

BASIS FOR FEDERAL CLAIMS

42 USCS § 1983

Civil Action For Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Excerpt From The Original Second Order
From The Federal District Court in This Cause,
Filed Nov. 9, 1989; Establishing 10 Year
Statute of Limitations and Removing Time Bar
From First Order

The Plaintiff also points out in his Motion that he is asserting an inverse condemnation claim under Art. I § 17 of the Texas Constitution. The Plaintiff correctly points out that under Texas law, a claim for inverse condemnation is governed by a ten-year statute of limitations. The Plaintiffs' claim under Art. I § 17 of the Texas Constitution is not barred by limitation. This claim is barred by claim preclusion. This information is found on second page of second Order for Dismissal.

A Document That Raises Questions As to Certification
of All Interested Parties; a Very Interested
Insurance Co. Party is Conspicuous by its Absence
As Well as Other Missing Interested Parties.
Filed Murphy Brief and Reply To Appeal For Rehearing.

Certification of Interested Parties

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case:

1. Stan Peacock and Patsy Peacock.
2. The City of Murphy, Texas and the City Counsel of Murphy, Texas, Defendants-Appellees.

Arthur L. Walker

Excerpts And Published Summary From The Two Landmark Decisions of This United States Supreme Court in June, 1987

James Patrick Nollan

v.

California Coastal Commission

483 US-,97 LEd2d 677, 107 s Ct-

(No. 86-133)

Decided June 26, 1987

Decision: Requiring grant of public easement across private property as condition of granting permit to build house on prop-

erty, held to effect taking of property without just compensation in violation of Fifth Amendment.

"but that the evident constitutional propriety disappears if the condition substituted for the prohibition utterly fails to further the end advanced as the justification for the prohibition" (regarding permit denial).

First English Evangelical Church

v.

County of Los Angeles Cal.

482 US-,96 LED 2d 250, 107 SCt-

(No. 85-1199)

June 9, 1987

Decision: Regulation depriving owner of all use of property held to entitle owner to compensation for period before determination that regulation effected "taking" under Fifth Amendment.

"that no subsequent action by the government can relieve the government of the duty to provide compensation for the period during which the taking was effective; and that without payment of fair value for use of property during the period in which the church was denied such use, would be a Constitutionally insufficient remedy."

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

STAN PEACOCK and PATSY PEACOCK

versus

CITY OF MURPHY, TEXAS and
CITY COUNCIL OF MURPHY, TEXAS

CIVIL ACTION NO. s -88-140-CA

DECIDED AND FILED

AUGUST 18, 1989

ORDER

On consideration of the Motion to Dismiss filed by defendants, it is the opinion of this Court that the motion should be granted.

In their motion, the defendants assert that the plaintiffs' claims in this case are barred by the doctrine of claim preclusion and by Texas' two-year statute of limitations. The defendants contend that the parties have already litigated the same claims which pertain to events that transpired in 1983 and 1984, in an earlier state court proceeding. The plaintiffs reply that "nothing" was decided in the earlier proceedings concerning their federal constitutional claims and that the statute of limitations was "tolled" from 1983 to 1987.

FACTS

Our story begins in April 1983 when the plaintiffs asked the defendants to approve a subdivision plat for "Peacocks Landing Estates". The defendants apparently failed to act on the plaintiffs' request for over ten months. On February 8, 1984, the Plaintiffs petitioned the defendants for the approval of four building permits concerning lots contained in the plaintiffs' subdivision plat. On February 29, 1984, the defendants issued a written denial of the permits. The parties were unable to reach an amicable resolution of their dispute, and so they trudged off to court.

Litigation between the parties began in state court in April 1984. The plaintiffs contended that the defendants had violated state law by not approving their subdivision plat, that the plat was "deemed" approved under state law thirty days after it was submitted, and the defendants' refusal to issue the building permits violated the plaintiffs' due process and equal protection rights and constituted a taking without just compensation, all in violation of federal law. After the defendants obtained a summary judgment, the plaintiffs successfully appealed the case to the Texas Supreme Court. That court remanded the case, and the parties proceeded the trial.

At the end of the case, the trial court denied the plaintiffs' request to submit its federal claims to the jury and submitted the case solely on the state law issues. The jury found in favor of the

defendants, and the trial court entered a judgment for the defendants on the basis of the jury's verdict. The plaintiffs appealed that the judgment to the Texas Court of Appeals. That court reversed the judgment of the trial court and remanded the case with instructions to the trial court to issue an order compelling the defendants to issue the requested building permits. Apparently all further proceedings in the state court were abandoned in favor of pursuing the case in this Court, for on May 11, 1988, the plaintiffs commenced this action and reasserted that they had raised in the state proceedings.

In passing on the merits of the defendants' Motion to Dismiss, the court found it necessary to order the defendant to submit copies of certain of the pleadings filed by the parties in the state court case. After reviewing these pleadings, and after thoroughly considering the arguments of both parties, the Court has reached the following conclusions: (1) the plaintiffs' claims in this case are barred by the judgment rendered in the Texas Court of Appeals in the previous state court case; and (2) the plaintiffs' claims are also barred by Texas two-year statute of limitations.

Claim Preclusion

"It is now settled that a federal court must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered." Migra v. Warren City School District Board of Education, 465 U.S. 75, 81, 1045 S.Ct. 892, 896 (1984): see 28 U.S.C.

S 1738: McWilliams v. McWilliams, 804F2d 1400, 1402 (5th cir. 1986). Under Texas law, claim preclusion involves the "dúal principles of merger and bar". Jeanes v. Henderson, 688 S.W. 2d 100, 103 (Tex. 1985). As illustrated by the Texas Supreme Court,

> When a prior judgment is offered in a subsequent suit in which there is identity of parties, issues and subject matter, such judgment is treated as an absolute bar to retrial of claims pertaining to the same cause of action on the theory that they have merged into the judgment.

Bonniwell v. Beech Aircraft Corp., 663 S.W. 2d 816, 818 (Tex. 1984). This rule applies to bar claims "actually litigated and also on claims that could have been litigated in the original cause of action". Jeanes, 668 S.W.2d at 103. Therefore, there are four elements to claim preclusion: (1) a final judgment on the merits, (2) rendered by court of competent jurisdiction, (3) involving the same parties and (4) the same cause of action. See Gorelick v. Harrison County, 720 S.W.2d 835, 836 (Tex. App. - Texarcana 1986, no writ).

It is undisputed that the earlier state court proceedings involved exactly the same parties that are present in this case. In the state proceedings, the plaintiffs raised all of the same federal constitutional claims that they are now pursuing in federal court. Furthermore, there is no suggestion that the state courts lacked

jurisdiction to entertain the plaintiffs' federal claims. The only question is whether the judgment rendered in state court was a final judgment on the merit of the plaintiffs' federal claims.

At the trial in state court, the plaintiffs requested jury instructions and issues on their federal constitutional claims. These claims were raised in the plaintiffs pleadings, and, according to the plaintiffs, they were supported by the evidence adduced at trial. Nevertheless, the trial court refused to submit the issues to the jury and instead, submitted the case only on state-law issues and entered a final judgment against the plaintiffs. The plaintiffs then appealed to the Texas Court of Appeals.

In their briefs to the Texas Court of Appeals, the plaintiffs presented 23 points of error. The plaintiffs' sixth point of error and all their supplemental points of error specifically addressed the trial court's refusal to submit their requested jury issues concerning their federal constitutional claims.

In an unpublished opinion, the Texas Court of Appeals reversed the judgment of the trial court. The Court held that:

In points of error numbers three, five, seventeen, and twenty-one, appellants argue that the trial court failed to submit proper issues to the jury. We agree and reverse the trial court's judgment and remand with instructions to the trial court to mandamus the City of Murphy.

Peacock v. City of Murphy, No. 05-86-01315-CV) Tex. App. - Dallas 1987, no writ)

The points of error cited by the court do not concern the plaintiffs' federal claims, but concern only state law issues. The court failed to remand the case for new trial on the plaintiffs' federal constitutional claims, to render judgment in their favor on these claims, or to make any other express disposition of these claims. This presents the question whether the Court of Appeals' decision was a final judgment on the merits of the plaintiffs' federal claims.

Under Texas law, "a judgment which grants part of the relief (requested) but omits reference to other relief put in issue by the pleadings will ordinarily be construed to settle all issues by implication". Vance v. Wilson, 382 S.W.2d 107, 108 (Tex. 1964); see also Allen v. Allen, 717 S.W.2d 311, 312 (Tex. 1986). "Where a claim is not expressly disposed of by a judgment even though it has been properly put in issue by the pleadings, the judgment will be considered to have denied such claim." Blackburn v. Faulkinbury, 554 S.W.2d 7, 9 (Tex. Civ. App. - Texarkana 1977, writ ref'd n.r.e.).

Although these cases have applied this rule in the context of judgments rendered by trial courts, the rule is the same with respect to judgments rendered in the Courts of Appeals. A judgment of a Court of Appeals "finally determines every question involved in the appeal, whether noticed by the Court or not".

Sweatman v. Stratton, 74 Tex. 76, 11 S.W. 1055 (1889).

In their appeal of the trial court's judgment, the plaintiffs specifically complained of the trial court's refusal to submit their federal claims to the jury, and they urged the Court of Appeals to reverse the trial court's judgment and render judgment in their favor on these claims. The Texas Court of Appeals agreed with the plaintiffs that the trial court "failed to submit the proper issues", but the Court's holding is based explicitly on plaintiffs' points of error three, five, seventeen, and twenty-one - none of which relate to the plaintiffs' complaint concerning the trial court's refusal to submit their federal claims to the jury. Although the Court of Appeals reversed the judgment of the trial court, it failed to remand the case for new trial of the federal claims. This point is crucial because with respect to their federal claims, the plaintiffs' sole recource in the Court of Appeals was to obtain a new trial on these claims; the Court of Appeals could not have rendered its own judgment on these claims.

When a Court of Appeals reverses the judgment of a trial court it must either render the judgment that the trial court should have rendered or remand the case to the trial court for further proceedings. Tex. R. App. P. 81(c) (1989). Since the trial Court refused to submit the plaintiffs' requested issues concerning their federal claims, there were no findings of the fact by the jury upon which the Court of Appeals could have rendered a judgment favorable to the plaintiffs. Under Texas law, the Court of

Appeals had no authority to make its own original Findings of Fact concerning the federal claims and to enter judgment based on such findings. See Jon-T Farms, Inc. v. Goodpasture, Inc., 554 W.W. 2d 743, 753 (Tex. Civ. App. - Amarillo 1977, writ ref'd n.r.e.). Therefore, the only action favorable to the plaintiffs that the Court could have taken with regard to their federal claims would have been an order remanding the case to the trial court for further proceedings - a new trial of the federal claims. Nothing in the Court's judgment indicates that the Court intended to award the plaintiffs a new trial on their federal claims. As the party suffering an adverse judgment in the trial court, the plaintiffs had the burden to obtain a favorable ruling from the Court of Appeals on the points of error relating to their federal claims. Having failed to do so, they can not reopen their case in a new forum.

Statute of Limitations

The Supreme Court has held that the states' statutes of limitations governing personal injury actions should be applied to actions under 42 U.S.C. S 1983. Wilson v. Garcia, 471 U.S. 261, 276-80 (1985). The rule is the same for cases such as this where a property owner invokes S 1983 to claim that his land has been taken without just compensation and in violation of his rights to equal protection and due process. See Norco Construction, Inv. v. King County, 801 F. 2d 1143, 1145 (9th Cir, 1986 (One-year

limitations statute governing personal injuries under Washington law applied to landowner's claims that his property was taken without compensation and in violation of his due process and equal protection rights); McMillan v. Goleta Water District, 792 F. 2d 1453, 1456, (9th Cir. 1986), cert. den., 107 S. Ct. 1348 (1987) (same claims, applying California one-year personal injury are governed by a two-year statute of limitations. Tex. Civ. Prac. & Rem. Code S 16.003 (Vernon 1989). Accordingly, the Court must determine when the plaintiffs' cause of action under federal law accrued.

The plaintiffs submitted their plat to the defendants in April 1983. The defendants issued a written denial of the plaintiffs' request for building permits in February 1984, and the plaintiffs commenced their state court action in March 1984. Therefore, the plaintiffs' claim accrued no later than the date on which they received the defendants' unfavorable decision - February 29, 1984. This conclusion is supported by the fact that shortly thereafter, the plaintiffs began to vigorously pursue their federal claims in state court.

The plaintiffs' petitions filed in the state court in 1984 specifically set forth their claims for a denial of due process and an unconstitutional taking of their property. These claims were predicated upon the defendants' refusal to approve the plaintiffs' subdivision plat and to issue the requested building permits. The facts that allegedly support the plaintiffs equal protection claim

- that the defendants approved building permits for other persons in the same area - were also alleged in the plaintiffs' state court petitions. The plaintiffs' claims against the defendants in this case are based on these same actions. Therefore, the plaintiffs claims concerning these actions taken by the defendants in 1984 are barred by the two-year statute of limitations.[1]

SUMMARY

Having found that the plaintiffs' claims are barred by claim preclusion as well as the statute of limitations, it is

ORDERED that the defendants' Motion to Dismiss is GRANTED. The Court will enter judgment accordingly.

Signed this 18th day of August, 1989.

Paul Brown

UNITED STATES DISTRICT JUDGE

Mld. 8-21-89

[1]The plaintiffs allege that during the time that the parties were litigating their state court case, they repeatedly renewed their requests for building permits. In a vain attempt to avoid the application of the two-year statute of limitations, the plaintiffs contend that each new request and each new refusal created a new cause of action with a new limitations period. The argument

is novel, but it is without merit. Alternatively, the plaintiffs contend that their claims did not accrue until November 1987 when the Texas Court of Appeals ordered the trial court to compel the defendants to issue the building permits. This argument is equally baseless since the plaintiffs had already been asserting their federal claims for over three years.

CONCLUSION AND FOOTNOTE: THE ABOVE ORDER FOR DISMISSAL INSTITUTES A TEXAS RULE OF APP. PROCEDURE INACTED IN 1989, TWO YEARS AFTER THE APPEALS COURT MADE ITS DECISION AND ONE YEAR AFTER THIS SUIT WAS FILED IN FEDERAL COURT. THIS ORDER INCLUDES TIME BAR THAT WAS WITHDRAWN IN SECOND ORDER AND CLAIM PRECLUSION THAT WONT STAND.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

STAN PEACOCK and PATSY PEACOCK

versus

CITY OF MURPHY, ET AL

CIVIL ACTION NO. S-88-140-CA

Decided and Filed

November 9, 1989

(SECOND) ORDER

On consideration of the plaintiffs' Motion to Reconsider this Court's Order of Dismissal entered on August 18, 1989, it is the opinion of this Court that the motion should be denied for the reasons set forth in the Court's Order of Dismissal.

On November 2, 1989, this Court conducted a hearing on the plaintiffs' Motion to Reconsider. At the conclusion of the hearing the Court granted the plaintiff the opportunity to file a supplemental motion to reconsider, on the contention that such a supplemental motion specifically set forth any claim arising under federal law that accrued after May 11, 1986. As the Court indicated in its Order of Dismissal, the plaintiff filed his original complaint in this Court on May 11, 1988, and his claim under 42

U.S.C. S 1983 are governed by a two year statute of limitations.

The court has now received and carefully reviewed the plaintiffs' Supplemental Motion to Reconsider. In the supplemental motion, the plaintiff contends that on four occasions after May 11, 1986, he orally requested that Murphy city attorney to have the city issue the building permits that he had requested. In each case, the plaintiff contends that the city attorney refused, and that each refusal constituted a new claim for an unconstitutional taking of his property. As the Court observed in its Order of Dismissal, each of the plaintiffs' repeated demands for his building permits did not continually create new and distinct cases of action for an unconstitutional taking. All of the demands made subsequent to May 11, 1986, that the plaintiffs refer to in supplemental motion were made while the parties were actively involved in litigation in the state courts did not create any new causes of action for unconstitutional taking.

The plaintiff also points out in his motion that he is asserting an inverse condemnation claim under Art. I S 17 of the Texas Constitution. The plaintiff correctly points out that under Texas law, a claim for inverse condemnation is governed by a ten year statute of limitations. See Hudson v. Arkansas Louisiana Gas Co., 626 S.W.2d 561, 563 (Tex. App. Texarkana 1981, writ ref'd n.r.e.). On review of the entire record in this case, the Court finds that Plaintiff pled this claim in the earlier state court litigation, requested the trial court to submit this claim to the jury, and

specifically complained to the Texas Court of Appeals in his point of error No. 6 that the trial court failed to submit this issue to the jury along with his federal claims. The plaintiffs' claim under Art. I S 17 of the Texas Constitution is not barred by limitations and the Court did not hold otherwise in its Order of Dismissal. For the reasons set forth in the Court's Order of Dismissal, however, this claim is barred by claim preclusion.

The Court has thoroughly considered all the other points raised by the plaintiffs in his original Motion to Reconsider, and the Court finds that they are without merit. Therefore, it is

ORDERED that the plaintiffs' Motion to Reconsider the Court's Order of Dismissal entered on August 18, 1989 is DENIED.

Signed this 9th day of November, 1989.

Paul Brown

UNITED STATES DISTRICT JUDGE

Mid. 11-9-89

CONCLUSION OR FOOTNOTE: THE JUDGE HAS RESCINDED THE TIME BAR IN THIS ORDER. ONLY CLAIM PRECLUSION REMAINED AND IT WAS NOT VALID.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 89-6212

Summary Calender

STAN PEACOCK and PATSY PEACOCK

PLAINTIFFS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

DEFENDANTS - APPELLEES

Appeal from the United States District Court

for the Eastern District of Texas

(S-88-140-CA)

(June 4, 1990)

Before HIGGINBOTHAM, SMITH, and BARKSDALE,

Circuit Judges.

PER CURIAM:

Plaintiffs Stan Peacock and Patsy Peacock appeal from the district Court's dismissal, on statute of limitations grounds, of their complaint brought under 42 U.S.C. S 1983. Finding no error, we affirm.

I.

The Peacocks were in the business of building and selling homes. They filed a subdivision plan and plat with the Mayor and city secretary of the City of Murphy, Texas, in April 1983, covering four lots in a subdivision they planned to develop.

The city's subdivision ordinance required that a subdivision plan be sent to the City engineer for approval. Four days after the Peacocks submitted the plan, the city engineer reported to the city secretary that the plan did not seem to meet city requirements. Under Texas law, a plat or plan was "deemed" approved if the governing body did not act upon the application within thirty days. See Tex. Rev. Civ. Stat. Ann. Art 974a (Vernon 1981), repealed by 1987 Tex. Gen. Laws ch. 149, S 49(1) (eff. Sep 1, 1987). City officials failed to act on the plat for ten months, i.e., until February 1984, when the city issued a written denial.

The Peacocks filed suit in state court in March 1984, seeking to compel the city to issue building permits and to approve sewer connections, water meters, and the like. The Peacocks alleged that the city's actions had deprived them of property without due process of law. They also sought money damages for the city's willful denial of equal protection and requested punitive damages and compensation for mental stress and anguish, loss of income, injury to professional reputation and loss of property's value.

Initially the state suit was dismissed after the city's motion

for summary judgment was granted, but the Texas Supreme Court reversed the appellate Court's affirmance. Peacock v. City of Murphy, 706 S.W. 2d 648 (Tex. 1986). On remand, the jury returned a verdict in favor of the city, finding that Peacock had not complied with the city's filing requirements. The jury also found that the city had not imposed upon other applicants whose subdivision plats were approved.

The Peacocks successfully appealed; the Texas Court of Appeals found that the trial court failed to submit the proper issues to the jury. The pertinent question was whether Peacock "filed his subdivision plat with the governing body of Murphy", not whether this plat complied with city ordinances. See Peacock v. City of Murphy, No. 05-86-01315-CV (Nov. 23, 1987) (unpublished) (emphasis in Original).

The city conceded that the Peacocks had filed a plat and plan. Thus under Art. 974a, the appellate court found that the Peacocks' plat was deemed approved thirty days after they filed it. The appellate court remanded the case with instructions to issue a Writ of Mandamus ordering the city to issue the requested permits.

The state Court of Appeals explicitly found merit in the Peacocks' points of error "numbers three, five, seventeen and twenty one", which asserted that the trial court had erred by not submitting to the jury all the issues pleaded and supported by evidence. The Peacocks argued in assignment of error five that the

city was "estopped from denying approval, in part, because there were Constitutional violations by Murphy against the Peacocks".

The Peacocks filed this section 1983 action in Federal court in May 1988. As in the state court litigation, they alleged that city and its council violated their Constitutional rights; the Peacocks sought actual and punitive damages and attorney fees. The city filed a motion to dismiss, asserting that a claim for damages was barred by the statute of limitations. The city also urged that this lawsuit had already been exhaustively adjudicated in state court and so was barred by res judicata.

The district court dismissed the complaint holding that the claim was barred by a two year statute of limitations. It found that the claim was barred by a two year statute of limitations. It found that the claim accrued no later than the date the Peacocks received the city's "unfavorable decision", i.e., February 1984.

II.

Suits under section 1983 must be filed within the forum state's general personal injury limitations period. Burrell v. Newsom, 883, F2d 416, 418, (5th Cir. 1989); see Owens v. Okur, 488 Us 235 (1989). Texas, the forum state has a two year personal injury statute of limitations. See Tex. Civ. Prac. & Rem. Code Ann. S 16.003(a) (Vernon 1986).

Federal Law governs the accrual of a cause of action under section 1983. See Watts v. Graves, 720 F2d 1416, 1423 (5th

Cir. 1983). A cause of action accrues when "the plaintiff knows or has reason to know of the injury and who has inflicted the injury". Id. (quoting Lavelle v. Listi, 611F2d 1129, 1131 (5th Cir. 1980).

The Peacocks allege that the city continued to refuse building permits, to grant a hearing, and to issue water meters or sewer taps. Even though the Peacocks' allegations share some characteristics with "continuing torts", see e.g., Storey v. United States, 629 F.Supp. 1174, 1177 (N.D. Miss. 1986) (plaintiff alleged continuing conspiracy between defendants deprived him of his property without due process), it should not be treated as one. A claim for inverse condemnation and related injuries from denial of due process or equal protection under section 1983 accrues when the "relevant governmental authorities have made a final decision on the fate of the property". See Norco Const., Inc. v. King County, 801 F2d 1143, 1146 (9th Cir. 1986.).

Like the Peacocks, NORCO Construction sought plat approval under state law. Washington state law required a county council to approve, disapprove, or return for modification a preliminary plat application within ninety days. NORCO, id. at 1144. Like the City of Murphy, King County ignored its statutory deadline. About five years after NORCO first sought county approval, King County approved NORCO's plat. The Ninth Circuit concluded that the statute of limitations began running from this date. Id. at 1146. See also McMillan v. Goleta Water Dist., 792

F2d 1453 (9th Cir. 1986), Crt. denied, 480 U.S. 906 (1987) (cause of action accrued on date application was denied, even though plaintiff knew of the taking earlier; waiting for final determination increased the possibility of finding a mutually acceptable solution).

The city's final determination to reject the Peacocks' plat came in February 1984; the Peacocks' plat came in February 1984; the Peacocks' federal suit was not filed until May 11, 1988. This was well over four years after any cause of action accrued.

While this suit was filed over four years after the city's initial decision to reject the Peacocks' subdivision, the Peacocks assert that the city's actions constituted a taking under United States v. Riverside Bayview Homes Inc., 474 U.S. 121, 127, (1985), that continued at least until November 1987. The Peacocks also alleged that after May 11, 1986, they orally requested the city attorney to have the city issue them building permits.

The Peacocks' earlier state court litigation demonstrates, however, that they knew of their injuries and who was allegedly responsible therefore no later than February 1984. The state litigation began a month later and asserted the same facts, involved the same defendants and sought money damages in part for the same alleged violations of the Peacocks' federal Constitutional rights. The Peacocks' "continuing tort" argument ignores many of the reasons statute of limitations are enacted. It also contradicts the idea that a cause of action accrues when one knows or

has reason to know of an injury. See e.g., Watts, 720 F.2d at 1423

As the Peacocks' suit was time barred, the district court's dismissal was not error. Accordingly, the judgment is affirmed.

CONCLUSION OR FOOTNOTE: THE ENTIRE OPINION ABOVE IS DEVOTED TO AFFIRMING TIME BAR, WHICH WAS INVALIDATED IN THE SECOND ORDER TO DISMISS. THIS AFFIRMATION DID NOT ADDRESS CLAIM PRECLUSION, WHICH, IN REALITY, CANNOT APPLY IN THIS CAUSE; AND THIS COURT HAS STEERED CLEAR OF THE SUBJECT AND THE TEXAS TEN YEAR STATUTE OF LIMITATIONS IN CASES OF INVERSE CONDEMNATION.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No 89-6212

STAN PEACOCK and PATSY PEACOCK

PLAINTIFFS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

DEFENDANTS - APPELLEES

Appeal from the United States District Court

for the Eastern District of Texas

ON SUGGESTION FOR REHEARING EN BANC

(Opinion 6-4-90, 5 Cir., 198__ , ___F2d___)

(June 27, 1990)

Before HIGGINBOTHAM, SMITH, and BARKSDALE,

Circuit Judges

Per Curiam:

(X) Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is denied.

Filed June 27, 1990

Clerk

Smith

United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 89-6212

STAN PEACOCK and PATSY PEACOCK

PLAINTIFFS - APPELLANTS

versus

CITY OF MURPHY, TEXAS and

CITY COUNCIL OF MURPHY, TEXAS

DEFENDANTS - APPELLEES

Appeal from the United States District Court

for the Eastern District of Texas

ORDER:

[X] The motion of Appellant

for [X] stay

/S/ JERRY E. SMITH

UNITED STATES CIRCUIT JUDGE

MDT-4

FILED

JULY 9, 1990

GILBERT E. GANUCHEAU